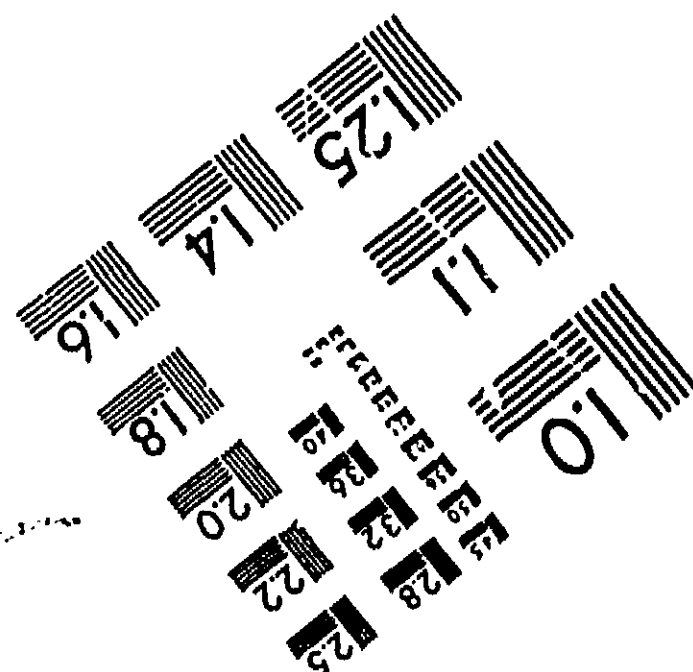
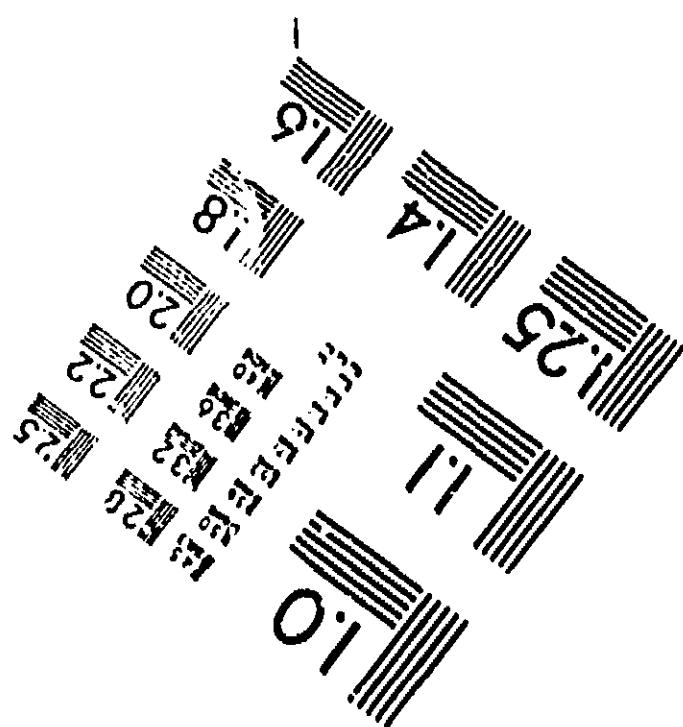
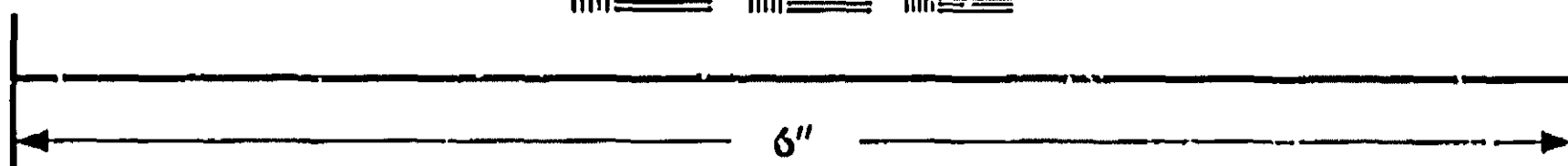
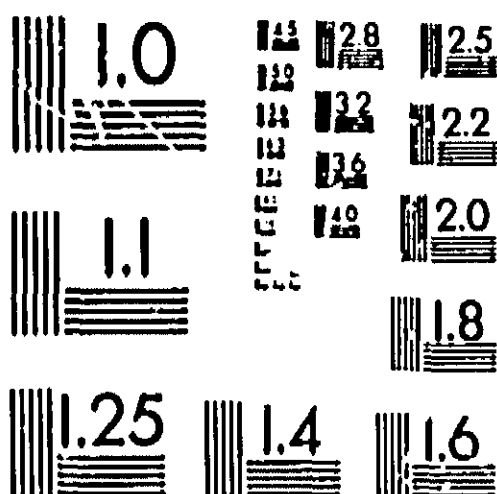


# IMAGE EVALUATION TEST TARGET (MT-3)



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Cohen  
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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-204381.3 **DATE:** June 2, 1982  
**MATTER OF:** Lavelle Aircraft Company

**DIGEST:**

1. The decision whether to waive first article approval tests for a particular bidder essentially is an administrative one that GAO will not disturb unless it clearly is arbitrary or capricious.
2. If first article approval tests are not waived for a particular bidder, the agency must add the evaluation factor specified in the solicitation to the bid.
4. The Government is not required to equalize the competitive advantage that a potential bidder might have based on its efforts under other Government contracts.

Lavelle Aircraft Company protests the Department of the Navy's award of a contract to Genii Research, Inc. under solicitation N00019-81-B-0002, the second step of a two-step formally advertised procurement for 4,080 Sidewinder missile fin assemblies. Lavelle contends that the Navy should not have added the cost for first article testing to its bid under the second step, in which case Lavelle's bid would have been lower than Genii's, for whom first article testing was waived.

We deny the protest.

The second-step solicitation defined "first article" as including "preproduction samples, test samples, first lots, pilot models, and pilot lots," and stated that approval involved the Government's testing and evaluation

of the first article for conformance with the contract requirements. The Government reserved the right to waive the requirement for first article approval for firms that previously had furnished identical or similar supplies. The solicitation also advised that if approval were required for any particular firm, that bid price would be evaluated by adding \$22,500 to cover the estimated cost to the Government to conduct the first article approval tests.

The tests were waived for Genii, whose evaluated bid was \$307,089.03, because Genii had furnished Sidewinder missile fins in the past. The tests were not waived for Lavelle, because the firm had never produced a Sidewinder missile fin. With the addition of \$22,500 to Lavelle's bid, pursuant to the solicitation's first article testing provision, the bid was evaluated at \$317,205.96. The Navy awarded the contract to Genii, whose evaluated bid was the lowest one received from the five companies that were found technically acceptable under the first step of the procurement.

Lavelle protests that the Navy should have waived first article testing for its offered product because Lavelle's source for the fin castings is a company that has provided Sidewinder missile fin castings for the Government in the past. The Navy, however, asserts that the fact that Lavelle would use a known casting supplier is irrelevant. The Navy points out that Lavelle would be responsible for machining the castings properly to meet specified tolerances, so that the finished fins still would have to undergo various tests to insure their acceptability.

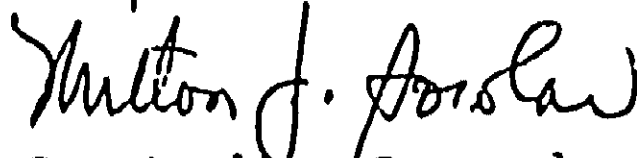
A first article approval requirement is designed to assure that the product offered will be satisfactory for its intended use, and thus to minimize risks for both the contractor and the Government. Defense Acquisition Regulation § 1-1902(a) (1976 ed.). The decision whether to waive first article testing for a particular bidder necessarily is an administrative one that our Office will not disturb unless it is arbitrary or capricious. Morse Diving Equipment Company, Inc., B-195289.2, January 18, 1980, 80-1 CPD 57.

The Navy's solicitation clearly advised that waiver might be granted if the bidder had furnished identical or similar supplies--Sidewinder missile fin assemblies--under other contracts with the Government, and Lavelle never has done so. Also, we have no basis to question the Navy's position that Lavelle's first article in fact would have to be tested notwithstanding the firm's casting supplier. We therefore will not object to the Navy's decision to require first article approval of Lavelle's product. It follows that the Navy properly added the \$22,500 evaluation factor specified in the solicitation to Lavelle's bid.

Lavelle also argues that if it had known that already-qualified firms such as Genii, for whom first article testing would be waived, were involved in the competition, it would not have participated.

We find no merit to Lavelle's argument. Lavelle should have known from the fact that the Government reserved the right to waive first article approval testing for firms that previously had furnished identical or similar supplies that such firms might compete. Moreover, to the extent that a firm such as Genii may have had an advantage in the competition, that is attributable to Genii's performance under prior Government contracts. The Government is not required to equalize that type of advantage. See Applied Devices Corporation, B-199371, February 4, 1981, 81-1 CPD 65.

The protest is denied.

for   
Comptroller General  
of the United States

**END**